

The Employment Rights Group

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June 1, 2016

Via E-Mail and First Class Mail

Robert W. Pritchard, Esquire
LITTLER MENDELSON, P.C.
625 Liberty Avenue
26th Floor
Pittsburgh, PA 15222

Re: *Boyington, et al. v. Percheron;*
Mary Beth Garner;
Acceptance of Offer of Judgment

Dear Rob,

Please be advised that Mary Beth Garner accepts Percheron's Offer of Judgment (attached) in the amount of \$7,000. It is our intent to file the Offer by June 7, 2016. We will convey our position on attorney's fees and costs by June 7, 2016.

Once the payment to Ms. Garner is made, and we have resolved any issues concerning fees and costs (and payment is made), we will have Ms. Garner's claims marked as satisfied with the Court.

Yours very truly,

/s/Joseph H. Chivers

Attachment

cc: Jill M. Weimer, Esq. *(via e-mail)*
Sarah J. Miley, Esq. *(via e-mail)*
Counsel for Defendant

Bruce C. Fox, Esq. (*via e-mail*)
Andrew J. Horowitz, Esq. (*via e-mail*)
Zachary K. Warren, Esq. (*via e-mail*)
John R. Linkosky, Esq. (*via e-mail*)
Counsel for Plaintiffs and Class

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ERIC BOYINGTON, on behalf of himself)	
and all others similarly situated,)	
)	Civil Action No. 3:14-CV-00090
Plaintiff,)	
)	
v.)	Judge Kim R. Gibson
)	
PERCHERON FIELD SERVICES, LLC,)	
)	
Defendant.)	

OFFER OF JUDGMENT

Defendant, Percheron Field Services, pursuant to Rule 68 of the Federal Rules of Civil Procedure, hereby serves this Offer of Judgment upon Plaintiff Mary Beth Garner ("Garner").

The terms and conditions of this Offer of Judgment are as follows:

1. Percheron hereby offers to allow judgment in this action to be taken in favor of Garner and against Percheron in the amount of \$7,000.00 (to be allocated 50% to Garner's claim for unpaid wages, and 50% to Garner's claim for liquidated damages, interest and other non-wage relief), plus a reasonable attorney's fee and costs of the action accrued through the date of this Offer of Judgment, plus reasonable attorney's fees and costs incurred after the date of this Offer of Judgment that are reasonably connected to its acceptance (e.g., review and consideration of this Offer of Judgment, and negotiating fees and costs and/or preparing the fee and cost petition after the date of this Offer of Judgment), where fees and costs shall be in amounts to be determined by the Court if the parties are not able to reach agreement.

2. The purpose of this Offer of Judgment is to encourage settlement and avoid litigation. This Offer of Judgment is not an admission of any liability whatsoever. Although Percheron contends that the claims in this action are without merit, Percheron proposes to allow

judgment to be entered against it pursuant to Rule 68 of the Federal Rules of Civil Procedure as described herein, solely for the purpose of resolving claims of Garner without the costs and burdens associated with further litigation. Accordingly, this Offer of Judgment is not to be construed as an admission that Percheron is liable in this action, that Garner suffered any damages, or that Garner (or any other individual employed by Percheron as a Right of Way Agent) were misclassified as exempt from the overtime provisions of the Fair Labor Standards Act, the Pennsylvania Minimum Wage Act or any other law. A judgment entered upon acceptance of this Offer of Judgment shall not be deemed to have determined or adjudicated any issue relevant to the merits of the claims of Garner, and shall have no effect whatsoever except in aiding the settlement of this case.

4. This Offer of Judgment may be accepted, in writing, within fourteen (14) days of service. No verbal communications shall constitute an acceptance, rejection or counter-offer to this Offer of Judgment. If, within fourteen (14) days after being served, Garner serves written notice accepting the offer, any party may then file the offer and notice of acceptance, plus proof of service, so that the clerk may then enter judgment. If Garner does not accept the offer within fourteen (14) days it is considered rejected and withdrawn.

5. Acceptance of the Offer of Judgment by Garner shall be deemed to resolve all claims asserted by Garner in this action, all claims expressly or impliedly stated by Garner in this action (regardless of the individual's status as a "named" plaintiff or an "opt in" plaintiff), all claims by Garner that are based on the same transaction(s) at issue in this action, and all claims Garner could have asserted against Percheron in this action.

6. By accepting this Offer of Judgment, Garner foregoes any right to relief with respect to her claims in this action except to the extent specifically referenced in Paragraph 1 of

this Offer of Judgment, including but not limited to: (a) declaratory and/or injunctive relief; (b) any additional amounts for unpaid wages, overtime compensation, liquidated damages, non-economic damages, and/or punitive damages (whether pursued on an individual, class or collective action basis); (c) pre-judgment interest and/or post-judgment interest; (d) any additional amounts for costs, expenses, attorney fees, and/or expert fees; and/or (e) any other relief not specifically provided by Paragraph 1 of this Offer of Judgment.

7. If accepted, the amount offered to Garner in Paragraph 1 of this Offer of Judgment will be paid within fourteen (14) days of the filing of this Offer of Judgment with the Court.

Respectfully submitted,

/s/ Sarah J. Miley

Robert W. Pritchard,
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*Attorneys for Defendant
Percheron Field Services, LLC*

Dated: May 19, 2016

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of May 2016, a true and correct copy of the foregoing was served, via E-mail and Hand Delivery, upon the following counsel of record:

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Zachary K. Warren, Esquire
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/s/ Sarah J. Miley

Sarah J. Miley

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